7-170

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES

No. 526.

THE UNITED STATES, APPELLANTS,

vs.

E. E. NORTON, ASSIGNEE OF B. P. ETHELL, A BANKRUPT.

APPEAL FROM THE COURT OF CLAIMS.

FILED OCTOBER 14, 1876.

SUPREME COURT OF THE UNITED STATES.

No. 526.

THE UNITED STATES, APPELLANTS,

vs.

E. E. NORTON, ASSIGNEE OF B. P. ETHELL, A BANKRUPT.

APPEAL FROM THE COURT OF CLAIMS.

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1 *Petition.—Filed June* 13, 1871.—*J. R.*

U. S. Court of Claims, December term, 1871.

E. E. NORTON, ASSIGNEE IN BANKRUPTCY OF B. P. Ethell, bankrupt,
vs.
THE UNITED STATES. } No. 6353.

To the honorable the Court of Claims:

The petition of Emory E. Norton, a citizen of Stoudsbourg, State of Pennsylvania, temporarily residing in the city of New Orleans, herein appearing as the assignee in bankruptcy of B. P. Ethell, bankrupt, with respect showeth:

That the said B. P. Ethell, residing in the city of New Orleans, was duly adjudged a bankrupt on the 26th day of May, 1868, in the district court of the United States for the district of Louisiana, and that on the 21st of June, 1868, your petitioner was duly appointed and qualified as the assignee in bankruptcy of said bankrupt, under the deed of assignment therein to him made by said court on said date of appointment.

Your petitioner now avers that the said B. P. Ethell while in the city of New Orleans, in the month of June, 1865, engaged in a transaction in cotton, under the authority of an act of Congress of July 2d, 1864, by which it was provided that it "should be lawful for the Secretary of the Treasury with the approval of the President to authorize agents to purchase for the United States any products of States declared in insurrection at such places as shall be therein designated by him, at such prices as shall be agreed upon with the seller, not exceeding the market-value thereof at the places of delivery, nor exceeding three-fourths of the market-value thereof in the city of New York, at the latest quotations known to the agent purchasing."

Your petitioner further shows that under the authority of said act of Congress, and in accordance therewith, the Secretary of the Treasury issued on the 24th day of September, 1864, with the approval of the President of same date, general regulations, and on the 9th of May, 1865, with the approval of the President of same date, amended regulations for the purchase of the products of the insurrectionary States on government account.

2 That accordingly the said B. P. Ethell sold to the United States, and repurchased therefrom through O. N. Cutler, the purchasing-agent of the United States, at the city of New Orleans, on the 23d day of June, 1865, one hundred and thirteen bales of cotton, weighing 45,140 pounds of the class of ordinary cotton; and abandoned to said purchasing-agent, O. N. Cutler, for the use of the United States, one-fourth of said lot of one hundred and thirteen bales, to wit, twenty-eight bales of cotton.

Your petitioner avers that the said surrender and payment on said June 23d, 1865, by said B. P. Ethell of said twenty-eight bales of cotton was illegally exacted and was made by said B. P. Ethell in error, because, before the transactions aforesaid were perfected, to wit, on the 13th day of June, 1865, the President of the United States had annulled and removed all restrictions on trade east of the Mississippi River, as by law he had a right to do, and that thereby the 8th section of said act of Congress of July 2d, 1864, under which said twenty-eight bales were claimed, was repealed and became inoperative as regards the city of New Orleans, which lies east of the Mississippi River.

Your petitioner further avers that he is advised and believes that the said O. N. Cutler, the purchasing-agent of the United States, regularly rendered his accounts to the Treasury Department, and under the direction of said government shipped the aforesaid cotton to the government agent at New York, through whom it was regularly sold, and that the proceeds thereof were paid over into the Treasury of the United States.

And whereas it appears from the premises that the Government of the United States has thus irregularly, incorrectly, and illegally obtained the proceeds of said twenty-eight bales of cotton, an implied obligation arises on the part of the United States to refund to your petitioner said proceeds of said bales.

Wherefore your petitioner submits and prays that a decree may be rendered, declaring that he is entitled to recover from the Government of the United States the proceeds of said twenty-eight bales of cotton, the amount of which can only be ascertained by the accounts of the Treasury Department, not accessible to your petitioner except through the assistance of this honorable court.

Your petitioner further avers that both he and said B. P. Ethell have always been loyal citizens of the United States; that they have at all times borne true allegiance to the government thereof, and that they have never in any way aided, abetted, or given encouragement to the rebellion against said government.

LOUIS JANIN & SONS,
Solicitors for Claimant,
Washington, D. C.

Address of claimant, New Orleans, La.

Bennett Payne Ethell, being duly sworn, deposes that he has at all times borne true allegiance to the Government of the United
3 States, and has not in any way voluntarily aided, abetted, or given encouragement to the rebellion against the said Government.

BENNETT PAYNE ETHELL.

Sworn to and subscribed before me this third day of March, 1869.

GEO. J. DAVIS,
U. S. Commissioner of Missouri.

E. E. Norton, assignee in bankruptcy of the estate of B. P. Ethell, bankrupt, being duly sworn, deposes that he has at all times borne true allegiance to the Government of the United States, and has not in any way voluntarily aided, abetted, or given encouragement to the rebellion against the said government; that no assignment or transfer of the claim set forth in the foregoing petition, or any part thereof, or any interest therein, has been made, except as in the said petition stated; that the affiant is justly entitled to the amount therein claimed from the United States, after allowing all just credits and offsets; and that he believes the facts as stated in said petition are true.

E. E. NORTON,
Assignee, &c.

Sworn to and subscribed before me this fifth day of June, 1871.

[SEAL.]

D. URBAN,
United States Commissioner.

4 In the Court of Claims of the United States, December term, A. D. 1870.

E. E. NORTON, ASSIGNEE IN BANKRUPTCY OF B. P. Ethell,
vs.
THE UNITED STATES. } No. 6353.

And now comes the Attorney-General, on behalf of the United States, and makes answer to the petition of the claimant herein; and, not confessing the same, or any part thereof, denies each and every the allegations therein contained, and calls for strict proof of the same.

And as to so much of the said petition as sets forth and avers that the United States are indebted to the said claimant in the sum of the proceeds of twenty-eight bales of cotton, says that they are not indebted to the said claimant in the said sum of money, nor any part thereof.

And as to so much of the said petition as avers that the said claimant has at all times borne true faith and allegiance to the Government of the United States, and never voluntarily aided, abetted, or given encouragement to rebellion against the said government, denies the said allegation.

THOMAS H. TALBOT,
Assistant Attorney-General.

Filed August 11, 1871.

5 In the Court of Claims.

E. E. NORTON, ASSIGNEE IN BANKRUPTCY OF B. P. Ethell,
vs.
THE UNITED STATES.

At a Court of Claims held at the Capitol, in the city of Washington, the 17th day of April, A. D. 1876, judgment was ordered to be entered up as follows:

The court, upon due consideration of the premises, find in favor of the claimant, and do order, adjudge, and decree that the said E. E. Norton, assignee in bankruptcy of B. P. Ethell, do have and recover of and from the United States the sum of three thousand eight hundred and fifty-six dollars seventy-two cents ($\$3,856\frac{72}{100}$).

By the court.

A true copy of record.

6 In the Court of Claims of the United States, December term, 1875.

E. E. NORTON, ASSIGNEE IN BANKRUPTCY OF B. P. Ethell,
vs.
THE UNITED STATES. } No. 6353.

From the judgment rendered in the above-entitled cause on the 17th April, 1876, in favor of claimant, the defendants, by their Attorney-

General, on the 14th day of July, 1876, make application for, and give notice of, an appeal to the Supreme Court of the United States.

THOMAS SIMONS,
Ass't Attorney-General.

Filed July 15, 1876.

AT CHAMBERS.

Allowed.

C. D. DRAKE, *C. J.*

7 In the Court of Claims.

E. E. NORTON, ASSIGNEE OF B. P. ETHELL, bankrupt,
vs.
THE UNITED STATES.
} No. 6353.

Findings of fact.

This case having been heard before the Court of Claims, the court, upon the evidence, finds the facts to be as follows:

That on the 27th June, 1865, the said Ethell, at New Orleans, in the State of Louisiana, under the act of 2 July, 1864, the Treasury regulations made in pursuance of said act and dated May 9, sold to

8 B. N. Cutler, purchasing-agent of the Treasury at New Orleans, 113 bales of upland cotton brought into New Orleans, from States in insurrection, and on the 27 June, 1865, the said Cutler, as agent as aforesaid, resold to said Ethel 85 bales of said cotton, leaving in the possession of the United States 28 bales of said 113 bales.

That the said 28 bales of cotton were sold by the United States; the net proceeds thereof, amounting to the sum of $3,856.72, were paid into the Treasury.

That the said Ethel, residing in the city of New Orleans, was duly adjudged a bankrupt on the 26 day of May, 1868, in the district court of the United States for the district of Louisiana, and that on the

9 21st of June, 1868, the petitioner was duly appointed & qualified as the assignee in bankruptcy of said bankrupt under the deed of assignment therein to him made by said court on said date of appointment.

That at the time of the sale and resale of said cotton above stated the parties thereto were ignorant of the proclamation of the President dated June 24, 1865.

And the court find that the petition is entitled to recover of the United States the said sum of $3,856.72, for which judgment is rendered.

10 And upon the foregoing findings of fact the Court of Claims decides as

Conclusion of law:

The Treasury agent in New Orleans having control and possession of the claimant's cotton brought in from the insurrectionary districts had no authority on the 27th June, 1865, to retain the same or one-fourth thereof, nor to exact from the owner a payment equivalent to one-fourth of its value under the act 2 July, 1864 (13 Stat. L., p. 375). And the owner should recover back the payment so exacted, it having been paid over to the defendants and being now in the Treasury.

By the court.

Filed March 18, 1876.

11 Court of Claims.

E. E. NORTON, ASSIGNEE OF B. P. ETHEL, bankrupt,
vs.
THE UNITED STATES. } No. 6353.

Request of claimant for further findings.

The claimant requests the court to find the following additional facts:
That during the enforcement of the said regulations no cotton subject thereto was allowed to be shipped to New Orleans except such as was consigned to the said Cutler, purchasing-agent of the Treasury.

E. & A. C. JANIN,
Attorneys of Claimant.

12 Filed March 23, 1876.

Upon the foregoing request the court makes the following order, to wit:
Allowed.

13 In the Court of Claims.

E. E. NORTON, ASSIGNEE IN BANKRUPTCY OF B. P. Ethell,
vs.
THE UNITED STATES. } 6353.

The Assistant Attorney-General, on behalf of the United States, requests the court to find the following additional facts:
1. The said 113 bales reached New Orleans by the steamer Saratoga on the 13th June, 1875.
2. The 85 bales were returned to Ethell free from all fees and internal-revenue taxes.
3. The marks upon all this cotton were various.

Upon the foregoing request the court makes the following order, to-wit:
Allowed.
Filed March 21, 1876.

THOMAS SIMONS,
Assistant Attorney-General.

14 In the Court of Claims.

E. E. NORTON, ASSIGNEE IN BANKRUPTCY OF B. P. Ethell,
vs.
THE UNITED STATES. } No. 6353.

I, John Randolph, assistant clerk of the Court of Claims, do hereby certify that the foregoing are true transcripts of the pleadings in the above-entitled cause and the final judgment of the court thereon; of the application of the Attorney-General for the defendants for the allowance of an appeal, as filed in the clerk's office July 15, 1876, and of the order of the chief justice of said court allowing the same; of the findings of fact

by the court and the conclusion of law thereon; of the requests of
ant and defendants for additional findings, and the rulings of the
thereon.

In testimony whereof I have hereunto set my hand and affixe
seal of said court at Washington this ninth day of October, A. D.

[SEAL.] JOHN RANDOLPH,
Ass't Clerk Court of Cla

(Indorsement on cover:) No. 526. The United States, appellant
E. E. Norton, assignee of B. P. Ethell, a bankrupt. Court of Cl
Filed 14 October, 1876.

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